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Kenny K. Fok

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KYOCERA WIRELESS CORP.

P.O. BOX 928289

SAN DIEGO, CA 92192-8289

EXAMINER

DANIEL JR, WILLIE J

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/848,070	<b>Applicant(s)</b> FOK, KENNY K.	
	<b>Examiner</b> WILLIE J. DANIEL JR	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 26 September 2008.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 50-62 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 50-62 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is in response to applicant's amendment filed on 26 September 2008. **Claims 50-62** are now pending in the present application and **claims 1-49 and 63** have been canceled. This office action is made **Final**.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 50 and 57** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "...**online**..." in claims 50 and 57 is used by the claim to mean "...**not** connected...", while the accepted meaning is "...**connected**...." The term is indefinite because the specification does not clearly redefine the term.

- a. **Claims 50 & 57** include the limitation "...is **online** even when a data **connection does not exist**..." as recited in lines 13-14 of claim 50. Also, claim 50 recites "...**logged into** the instant messaging service..." in line(s) 18 of the claim. The

applicant is advised to review the subject matter of the specification (see pg. 8, line(s) 12-13), which clearly states ...**active but not participating in a data connection**...; specification (see pg. 10, line(s) 14-15), which clearly states ...**active state is...powered up but is not connected**...; specification (see pg. 11, line(s) 11-13), which clearly states ...**logging in to the instant messaging service...indicating the user is online**...; and specification (see pg. 11, line(s) 19-20), which clearly states ...**device is connected...logs in to the instant messaging service**....

Regarding **claims 50 & 57**, the claims recite language that is not clear and concise in which the Examiner respectfully request the applicant to clarify the claims. The applicant is advised to review the cited reference material (see Newton's "online"), which clearly states ...**a connection, through a modem, to another computer**. If the applicant considers the current language to be sufficient, the Examiner respectfully requests page(s), line(s), and/or drawing(s) of the instant application that supports the claim language and any supportive comment(s) to help clarify and resolve this issue(s).

3. In response to applicant's arguments on pg. 7, section A, the Examiner respectfully disagrees. Applicant's use of the term "...online..." is inconsistent with (or opposite from) the accepted meaning in the field of endeavor. Therefore, as indicated above, the 112 rejection is hereby maintained.
4. Due to the 112 rejection of the current claim language, the Examiner has given a reasonable interpretation of said language and the claims are rejected as broadest and best interpreted. In addition, applicant is welcomed to point out where in the specification the Examiner can find support for this language if Applicant believes otherwise.

5. This list of examples is not intended to be exhaustive. The Examiner respectfully requests the applicant to review all claims and clarify the issues as listed above as well as any other issue(s) that are not listed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 50-56** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carey et al.**

(hereinafter Carey) (**US 6,714,793 B1**) in view of **Gudjonsson et al.** (hereinafter Gudjonsson) (**US 6,564,261 B1**).

Regarding **claim 50**, Carey discloses a system (20) for providing a mobile unit device (36) which reads on the claimed “wireless communications device” access to an instant messaging service on a data network (30), the instant messaging service communicating instant messages in an instant message format (see col. 3, lines 18-49; Figs. 1, 5-6), the system (20) comprising:

a wireless mobile carriers (34) which reads on the claimed “wireless network” (see col. 6, lines 26-32, 52-60; col. 3, lines 45-49; col. 7, lines 19-29; Figs. 1, 5, 9-10, and 12);

a short message service (SMS) center (32) connected to the wireless network (34) (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1, 5-6);

a IM routing system (22) which reads on the claimed “proxy server” having a first connection to the SMS center (32) and a second connection to a data network (30) (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1, 5, and 6),

the proxy server (22) for establishing a substitute proxy presence on the data network (30) for the wireless communications device (36) (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5), where the user presence is established between networks,

the proxy server (22) for transmitting presence information to the instant messaging service to indicate that the wireless communications device (36) is online (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6),

the proxy server (22) for intercepting and storing an instant message addressed to the wireless communications device (36) (see col. 9, lines 35-38; col. 5, lines 66-67; Fig. 1), where the combined functions of the routing system (22) and the instant message server (40) would provide the storing of instant messages; and

a plurality of traditional systems (42) which reads on the claimed “information handling systems” connected to the data network (30) and logged into the instant messaging service for sending and receiving the instant messages (see col. 3, lines 18-34; col. 4, lines 6-11; Fig. 1). Carey does not specifically disclose having the feature even when a data connection does not exist between the wireless communication device and the wireless network. However, the examiner maintains that the feature even when a data connection does not exist between the wireless communication device and the wireless network was well known in the art, as taught by Gudjonsson.

In the same field of endeavor, Gudjonsson discloses the feature even when a data connection does not exist between the wireless communication device and the wireless network (see col. 2, lines 20-22; col. 3, lines 14-17; col. 7, line 53 - col. 8, line 30; col. 8, lines 53-65; col. 11, lines 32-64; Figs. 1-9, 19, and 21), where the system uses proxy server (21, 23) to communicate between short text message (i.e., instant message) and SMS and to provide connection and status (see col. 10, lines 8-21; col. 11, lines 21-27; col. 17, lines 38-44; col. 36, lines 12-25; 56-62; Figs. 1-6 and 13). As a note, basically the proxy server provides an on-demand connection that can be automatically suspended and resumed as needed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey and Gudjonsson to have the feature even when a data connection does not exist between the wireless communication device and the wireless network, in order to provide user with a simple and secure way of establishing arbitrary communications with other users or services, as taught by Gudjonsson (see col. 7, lines 39-42).

Regarding **claim 51**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 50), in addition Carey further discloses the system of claim 50, wherein the proxy server notifies the SMS center (32) that the instant message addressed to the wireless communications device (36) has been received (see col. 7, lines 8-18; Fig. 6).

Regarding **claim 52**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 50), in addition Carey further discloses the

system of claim 50, wherein the proxy server (22) converts at least a portion of the intercepted instant message to a short message format, and sends a converted message to the wireless communications device (36) through the wireless network (34) via the SMS center (32) (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7), where the server (24) uses a predefined to protocol to convert messages between instant message and short message service.

Regarding **claim 53**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 50), in addition Carey further discloses the system of claim 50, wherein the proxy server (22) converts an identifier (e.g., name, phone number, or address) of a sender of the intercepted instant message to a short message format and sends the converted identifier of the sender to the wireless communications device (36) (see col. 7, lines 12-22; col. 5, lines 43-50; col. 8, lines 19-21,32-40; col. 3, lines 24-27,50-66; col. 4, lines 11-33; Figs. 1, 6-7, and 9-10), where the server (24) uses a predefined to protocol to convert messages between instant message and short message service.

Regarding **claim 54**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 52), in addition Carey further discloses the system of claim 52, wherein the SMS center (32) stores the converted message (see col. 7, lines 27-29; Fig. 7 “ref. 172”).

Regarding **claim 55**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 50), in addition Carey further discloses the system of claim 50, wherein the proxy server (22) receives a response short message from the wireless communications device (36) that is addressed to an information handling system of



the plurality of information handling systems (42), converts the response short message to an instant message format response message, and sends the instant message response message to the information handling system (42) (see Figs. 1 and 6-7).

Regarding **claim 56**, the combination of Carey and Gudjonsson discloses every limitation claimed, as applied above (see claim 50), in addition Carey further discloses the system of claim 50, wherein the proxy server (22) receives an indication that the wireless communications device (36) is in an inactive state, and wherein the proxy server removes the substitute proxy presence upon receipt of the indication that the wireless communications device (36) in the inactive state (see col. 7, lines 44-64; col. 8, line 61 - col. 9, line 5; Figs. 7 “ref. 174”, 12).

**Claims 57-62** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carey et al.** (hereinafter Carey) (**US 6,714,793 B1**) in view of **Gudjonsson et al.** (hereinafter Gudjonsson) (**US 6,564,261 B1**) and **Polychronidis et al.** (hereinafter Polychronidis) (**US 2003/0018704 A1**).

Regarding **claim 57**, Carey discloses a method for providing a wireless communications device (36) access to an instant messaging service connected to a data network (30) (see Fig. 1), the method comprising the steps of:

communicating an active message state status from the wireless communications device to a wireless network, wherein the wireless network is connected to a short messaging service (SMS) center, the SMS center is connected to a proxy server (22), and the proxy

server (22) is connected to the data network (30) (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6);

the proxy server (22) establishing a stand-in on-line presence for the wireless communications device with the instant messaging service (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5), where the user presence is established between networks;

the proxy server (22) maintaining the stand-in on-line presence as long as the wireless communications device remains in the active message state status (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6); and

the proxy server (22) intercepting and storing at least one instant message intended for the wireless communications device (36) (see col. 9, lines 35-38; col. 5, lines 66-67; Fig. 1), where the combined functions of the routing system (22) and the instant message server (40) would provide the storing of instant messages. As a note, Carey further teaches the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5). Carey does not specifically disclose having the features even when a data connection does not exist between the wireless communication device and the wireless network; the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device. However, the examiner maintains that the feature even when a data connection does not exist between the wireless

communication device and the wireless network was well known in the art, as taught by Gudjonsson.

In the same field of endeavor, Gudjonsson discloses the feature even when a data connection does not exist between the wireless communication device and the wireless network (see col. 2, lines 20-22; col. 3, lines 14-17; col. 7, line 53 - col. 8, line 30; col. 8, lines 53-65; col. 11, lines 32-64; Figs. 1-9, 19, and 21), where the system uses proxy server (21, 23) to communicate between short text message (i.e., instant message) and SMS and to provide connection and status (see col. 10, lines 8-21; col. 11, lines 21-27; col. 17, lines 38-44; col. 36, lines 12-25; 56-62; Figs. 1-6 and 13). As a note, basically the proxy server provides an on-demand connection that can be automatically suspended and resumed as needed. Also, Gudjonsson further teaches the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device (see col. 2, lines 20-22).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey and Gudjonsson to have the feature even when a data connection does not exist between the wireless communication device and the wireless network, in order to provide user with a simple and secure way of establishing arbitrary communications with other users or services, as taught by Gudjonsson (see col. 7, lines 39-42). The combination of Carey and Gudjonsson does not specifically disclose having the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is

responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device. However, the examiner maintains that the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device was well known in the art, as taught by Polychronidis.

As further support in the same field of endeavor, Polychronidis discloses the feature the proxy server determining that the wireless communications device (e.g., mobile device 22) is in the active message state status if the wireless communications device is responsive to a special SMS message (e.g., probe) that is periodically sent by the proxy server to the wireless communications device (see pg. 3, [0034-0035, 0037]; pg. 4, [0050]; Figs. 2 and 4), where the active communication state is indicated when the device (22) is powered up which registers with the network (26) and the status is monitored. As a note, Polychronidis further discloses the feature the proxy server establishing a stand-in on-line presence for the wireless communications device with the instant messaging service even when a data connection does not exist between the wireless communication device and the wireless network (26, 43) (see pg. 3, [0034-0035, 0037]; pg. 4, [0050]; Figs. 2 and 4), where the system is aware of the mobile device presence and location in the network for communication even though no data connection is established for exchanging communication messages.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey, Gudjonsson, and Polychronidis to have the feature the proxy server determining that the wireless communications device is in

the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device, in order to have a network presence and location agent which acquires presence and location information about multiple mobile devices operating on a network from an entity on the wireless network, as taught by Polychronidis (see pg. 1, [0005]).

Regarding **claim 58**, the combination of Carey, Gudjonsson, and Polychronidis discloses every limitation claimed, as applied above (see claim 57), in addition Carey further discloses the method of claim 57 further comprising the steps of:

the proxy server (22) converting at least a portion of the at least one instant message to short message service (SMS) format (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7), where the server (24) uses a predefined to protocol to convert messages between instant message and short message service;

sending the converted message to the SMS center (32) (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7), where the server (24) uses a predefined to protocol to convert messages between instant message and short message service;

the SMS center (32) sending the converted message to the wireless network (34) (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7); and

the wireless network (34) delivering the converted message to the wireless communications device (36) (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7).

Regarding **claim 59**, the combination of Carey, Gudjonsson, and Polychronidis discloses every limitation claimed, as applied above (see claim 57), in addition Carey further discloses the method of claim 57, further comprising the step of:

the proxy server (22) notifying the wireless communications device (36) through the SMS center (32) and the wireless network (34) that the at least one instant message has been received (see col. 7, lines 8-18; Fig. 6).

Regarding **claim 60**, the combination of Carey, Gudjonsson, and Polychronidis discloses every limitation claimed, as applied above (see claim 59), in addition Carey further discloses the method of claim 59, wherein the step of notifying comprises the steps of:

the proxy server (22) converting at least a portion of the at least one instant message from instant message format to short message service (SMS) format (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7); and

sending the converted message to the wireless communications device through the SMS center (32) (see col. 7, lines 12-22; col. 3, lines 24-27,50-66; Figs. 1 and 6-7).

Regarding **claim 61**, the combination of Carey, Gudjonsson, and Polychronidis discloses every limitation claimed, as applied above (see claim 60), in addition Carey further discloses the method of claim 60, further comprising the step of:

the proxy server (22) converting an identifier of the sender of the at least one instant message from the instant message format to SMS format (see col. 7, lines 12-22; col. 5, lines 43-50; col. 8, lines 19-21,32-40; col. 3, lines 24-27,50-66; col. 4, lines 11-33; Figs. 1, 6-7, and 9-10); and

sending the converted identifier to the wireless communications device (36) (see col. 7, lines 12-22; col. 5, lines 43-50; col. 8, lines 19-21,32-40; col. 3, lines 24-27,50-66; col. 4, lines 11-33; Figs. 1, 6-7, and 9-10).

Regarding **claim 62**, the combination of Carey, Gudjonsson, and Polychronidis discloses every limitation claimed, as applied above (see claim 58), in addition Carey further discloses the method of claim 58, further comprising the steps of:

the wireless communications device (36) sending a response message transmitted in short message service format to the proxy server (22) (see Figs. 1 and 6-7); and

the proxy server (22) converting the response message to instant message format and transmitting the converted response message over the data network (30) (see Figs. 1 and 6-7).

**Claims 50 and 57** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carey et al.** (hereinafter Carey) (**US 6,714,793 B1**) in view of **Guedalia et al.** (hereinafter Guedalia) (**US 7,043,538 B2**).

Regarding **claim 50 and 57**, Carey discloses a system and a method for providing a wireless communications device (36) access to an instant messaging service connected to a data network (30) (see Fig. 1), the method comprising the steps of:

communicating an active message state status from the wireless communications device to a wireless network (34), wherein the wireless network is connected to a short messaging service (SMS) center, the SMS center is connected to a proxy server (22), and the proxy server (22) is connected to the data network (30) (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6);

the proxy server (22) establishing a stand-in on-line presence for the wireless communications device with the instant messaging service (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5), where the user presence is established between networks;

the proxy server (22) maintaining the stand-in on-line presence as long as the wireless communications device remains in the active message state status (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6); and

the proxy server (22) intercepting and storing at least one instant message intended for the wireless communications device (36) (see col. 9, lines 35-38; col. 5, lines 66-67; Fig. 1), where the combined functions of the routing system (22) and the instant message server (40) would provide the storing of instant messages. As a note, Carey further teaches the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5). Carey does not specifically disclose having the features even when a data connection does not exist between the wireless communication device and the wireless network; the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device. However, the examiner maintains that the features even when a data connection does not exist between the wireless communication device and the wireless network; the proxy server determining that the



wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device was well known in the art, as taught by Guedalia.

In the same field of endeavor, Guedalia discloses the feature even when a data connection does not exist between the wireless communication device and the wireless network (see col. 5, lines 3-9; col. 3, lines 31-35,57-60; col. 2, lines 22-27);

the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device (see abstract; col. 5, lines 3-9; col. 3, lines 31-35,57-60; col. 2, lines 22-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey and Guedalia to have the features even when a data connection does not exist between the wireless communication device and the wireless network; the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device, in order to enable a thin client to utilize a presence server through a simple interface, as taught by Guedalia (see col. 1, lines 63-65).

**Claims 50 and 57** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carey et al.** (hereinafter Carey) (**US 6,714,793 B1**) in view of **Chen et al.** (hereinafter Chen) (**US 7,020,685 B1**) and **Polychronidis et al.** (hereinafter Polychronidis) (**US 2003/0018704 A1**).

Regarding **claim 50 and 57**, Carey discloses a system and a method for providing a wireless communications device (36) access to an instant messaging service connected to a data network (30) (see Fig. 1), the method comprising the steps of:

communicating an active message state status from the wireless communications device to a wireless network (34), wherein the wireless network is connected to a short messaging service (SMS) center, the SMS center is connected to a proxy server (22), and the proxy server (22) is connected to the data network (30) (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6);

the proxy server (22) establishing a stand-in on-line presence for the wireless communications device with the instant messaging service (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5), where the user presence is established between networks;

the proxy server (22) maintaining the stand-in on-line presence as long as the wireless communications device remains in the active message state status (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6); and

the proxy server (22) intercepting and storing at least one instant message intended for the wireless communications device (36) (see col. 9, lines 35-38; col. 5, lines 66-67; Fig. 1), where the combined functions of the routing system (22) and the instant message server (40) would provide the storing of instant messages. As a note, Carey further teaches the feature the proxy server determining that the wireless communications device is in the active

message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device (see col. 5, lines 5-18; col. 6, lines 12-60; col. 4, lines 11-19; Fig. 5). Carey does not specifically disclose having the features even when a data connection does not exist between the wireless communication device and the wireless network; the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device. However, the examiner maintains that the feature even when a data connection does not exist between the wireless communication device and the wireless network was well known in the art, as taught by Chen.

In the same field of endeavor, Chen discloses the feature even when a data connection does not exist between the wireless communication device and the wireless network (see abstract; Figs. 1 and 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey and Chen to have the feature even when a data connection does not exist between the wireless communication device and the wireless network, in order to provide content from a network to a wireless device, as taught by Chen (see col. 1, lines 63-65). The combination of Carey and Chen does not specifically disclose having the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the

wireless communications device. However, the examiner maintains that the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special SMS message that is periodically sent by the proxy server to the wireless communications device was well known in the art, as taught by Polychronidis.

As further support in the same field of endeavor, Polychronidis discloses the feature the proxy server determining that the wireless communications device (e.g., mobile device 22) is in the active message state status if the wireless communications device is responsive to a special SMS message (e.g., probe) that is periodically sent by the proxy server to the wireless communications device (see pg. 3, [0034-0035, 0037]; pg. 4, [0050]; Figs. 2 and 4), where the active communication state is indicated when the device (22) is powered up which registers with the network (26) and the status is monitored. As a note, Polychronidis further discloses the feature the proxy server establishing a stand-in on-line presence for the wireless communications device with the instant messaging service even when a data connection does not exist between the wireless communication device and the wireless network (26, 43) (see pg. 3, [0034-0035, 0037]; pg. 4, [0050]; Figs. 2 and 4), where the system is aware of the mobile device presence and location in the network for communication even though no data connection is established for exchanging communication messages.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Carey, Chen, and Polychronidis to have the feature the proxy server determining that the wireless communications device is in the active message state status if the wireless communications device is responsive to a special

SMS message that is periodically sent by the proxy server to the wireless communications device, in order to have a network presence and location agent which acquires presence and location information about multiple mobile devices operating on a network from an entity on the wireless network, as taught by Polychronidis (see pg. 1, [0005]).

***Response to Arguments***

7. Applicant's arguments filed 26 September 2008 have been fully considered but they are not persuasive.

The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the above claims for relevant citations and comments in this section).

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding applicant's argument of improper hindsight (see pg. 8, 3<sup>rd</sup> full par.), the Examiner respectfully disagrees. The Examiner's rejection is based on the common knowledge of prior art filed prior to the instant application.

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 50 in the par. bridging pgs. 8-9 - pg. 9, 1<sup>st</sup> full par., "...device with an instant messaging service such that the wireless communications

device appears online even when in fact there is no data connection between the wireless communication device and the wireless network...”, the Examiner respectfully disagrees. As a note, applicant admits in the par. bridging pgs. 8-9 that **any other type of server can** maintain the presence information of the wireless communication device with an instant message service. Applicant has failed to appreciate the combination of well-known prior art Carey and Gudjonsson that clearly discloses the claimed feature(s) as would be clearly recognized by one of ordinary skill in the art. In particular, Carey discloses the features the proxy server (22) for transmitting presence information to the instant messaging service to indicate that the wireless communications device (36) is online (see col. 3, lines 18-34; col. 5, lines 23-43; Figs. 1 and 5-6). As further support in the same field of endeavor, Gudjonsson discloses the feature(s) even when a data connection does not exist between the wireless communication device and the wireless network (see col. 2, lines 20-22; col. 3, lines 14-17; col. 7, line 53 - col. 8, line 30; col. 8, lines 53-65; col. 11, lines 32-64; Figs. 1-9, 19, and 21), where the system uses proxy server (21, 23) to communicate between short text message (i.e., instant message) and SMS and to provide connection and status (see col. 10, lines 8-21; col. 11, lines 21-27; col. 17, lines 38-44; col. 36, lines 12-25; 56-62; Figs. 1-6 and 13). As a note, basically the proxy server provides an on-demand connection that can be automatically suspended and resumed as needed. Furthermore, a communications system recognizes the availability (or presence) of a mobile device when powered-on by providing metering signals such as strength indicators or bars in which there is no data connection or message exchange. For example, a messaging service such as SMS will recognize that a mobile device is available via the communications system. Therefore, the combination of

Carey and Gudjonsson as well as other applied reference(s) more than adequately meets the claim limitations.

10. Regarding applicant's argument(s) of claims 51-62, the claims are addressed for the same reasons as set forth above and as applied above in each claim rejection.
11. The Examiner requests applicant to provide support for any further amended claim language.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIE J. DANIEL JR whose telephone number is (571)272-7907. The examiner can normally be reached on 8:30-4:30.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WJD,Jr/

WJD,Jr  
21 December 2008

/Charles N. Appiah/  
Supervisory Patent Examiner, Art Unit 2617